Texas Department of Information Resources

DIR-TSO-3385

Appendix D – Vendor Software License, Service Level, and Data Security Agreements

Contents

ClassLink Software License Agreement

1.   Annual Software License Agreement Overview

1.1   This Software License Agreement is entered into by and between ClassLink, Inc. (ClassLink) and Customer and in accordance with DIR Contract No. DIR-TSO-3385, describes the terms and conditions pursuant to which ClassLink shall grant to Customer a non-transferable and non-exclusive license to use certain ClassLink Software.

2.   Definitions

2.1   "Agreement" means this Annual Software License Agreement including any and all attached Schedules.

2.2   "Annual License and Support Fees" include fees payable by Customer to ClassLink for licensing and maintenance support of ClassLink Software.

2.3   "Application" means the specific Applications set forth in the Purchase Order from Customer for ClassLink Software running on one or more related computers that share the same ClassLink Software Database.

2.4   "ClassLink Software" means (i) ClassLink software products provided to the Customer, (ii) Updates, (iii) custom reports or any custom software modifications for Customer, and (iii) Documentation. ClassLink Software does not include Source Code.

2.5   "ClassLink Software Database" means the customer database associated with the ClassLink Software which contains the Customer Data.

2.6   "Confidential Information" to the extent allowable under the Texas Public Information Act, means proprietary information supplied to Customer by ClassLink or by Customer to ClassLink which is clearly marked as "confidential" if in tangible form, or identified as "confidential" if orally disclosed.

2.7   "Customer Data" shall mean and include all administrative, student, teacher, and other related information belonging to Customer.

2.8   "Documentation" means all written user information, whether in electronic, printed or other format, delivered or made available to Customer by ClassLink with respect to ClassLink Software, now or in the future, including instructions, manuals, training materials, and other publications that contain, describe, explain or otherwise relate to ClassLink Software.

2.9   "Effective Date" means the earlier of (a) the date this Agreement is signed by Customer and ClassLink or (b) the date of the Purchase Order.

2.10   "Purchase Order" means a purchase order submitted by Customer to ClassLink in which Customer specifies the ClassLink Software being licensed.

2.11   "Source Code" means the instructions and statements, used for compilation into machine readable form that makes up an item of ClassLink Software.

2.12   "Subscription Term" means the right to use and access the ClassLink Software for one year or the period of time specified herein or the Customer's Purchase Order. At the end of Subscription Term, Customer's license and associated rights specified in this Agreement will expire, unless renewed on then-current terms and in accordance to DIR Contract No. DIR-TSO-3385. This Agreement and license to use ClassLink Software will also terminate if Customer fails to comply with any term or condition in this Agreement and fails to remedy such failure within ten (10) days of written notification of such failure from ClassLink to Customer.

2.13 "Updates" means any updates to the ClassLink Software licensed hereunder which ClassLink, in its discretion, makes generally available to its ClassLink Software licensees.

3. License Grant and Terms

3.1 This Agreement authorizes Customer to use items of ClassLink Software specified in the Purchase Order during the term of this Agreement.

3.2 Customer understands and acknowledges that operation of the ClassLink Software may require the use of certain third party software such as Microsoft Windows Server, Microsoft SQL, Crystal Reports, etc., which Customer must separately license at its own expense.

3.3 Customer agrees that it will not itself, or through any parent, subsidiary, affiliate, agent or other third party sell, lease, license, sublicense, encumber or otherwise deal with any portion of the ClassLink Software;

3.4 ClassLink shall provision and make ClassLink Software available to Customer during the term of this Agreement; provided, however, Customer acknowledges that ClassLink may take the ClassLink Software down from time to time to perform maintenance and/or upgrades. In addition, Customer agrees that from time to time the ClassLink Software may be inaccessible or inoperable due to ClassLink Software errors or causes beyond the control of ClassLink or which are not reasonably foreseeable by ClassLink, including, but not limited to: the interruption or failure of telecommunication or digital transmission links; hostile network attacks; network congestion; or other failures (collectively "Downtime"). ClassLink shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the ClassLink Software caused by Downtime, whether scheduled or not.

3.5 ClassLink may, in its discretion, from time to time, as determined by ClassLink, add new features, functionality or content to the ClassLink Software; limit, modify or discontinue existing features, functionality or content made available with the ClassLink Software; or incorporate revisions into the ClassLink Software as may be deemed appropriate by ClassLink.

3.6 Where ClassLink Software is installed on premises, Customer shall be responsible for the purchase, configuration and ongoing maintenance of relevant equipment, systems and software to achieve the Customer's desired results.

4. Confidentiality

4.1 Customer acknowledges that the ClassLink Software contains proprietary, trade secret and confidential information belonging exclusively to ClassLink. Title to, ownership of and all proprietary rights in the ClassLink Software and all copies thereof, including translations or compilations or partial copies, are reserved to and will at all times remain with ClassLink.

4.2 Customer shall not (i) disclose the ClassLink Software or any confidential ideas, techniques and concepts contained therein to any third party without the prior written consent of ClassLink, (ii) where ClassLink Software is installed on premises, copy the ClassLink Software or any portion thereof except as necessary for use within Customer's organization.

4.3 The parties further agree to the terms in DIR Contract DIR-TSO-3385, Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, Section 10.H, Confidentiality.

5. Charges

5.1 Annual license and support fees (ClassLink Subscription Fees) may be based on student enrollment, staff enrollment or building count for certain ClassLink Software products. Renewal of this Agreement and related ClassLink Subscription Fees shall be based on DIR Contract DIR-TSO-3385, Appendix C, Pricing Index. Customer agrees to notify ClassLink at such time as student enrollment increases more than 20% during a Subscription Term wherein additional ClassLink Subscription Fees may be required for the remainder of the Subscription Term.

5.2   Unless ClassLink and Customer shall otherwise agree, payment for ClassLink Subscription Fees shall be handled in accordance with DIR Contract DIR-TSO-3385, Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, Section 8.J, Payments .

6.   Warranties

6.1   ClassLink makes no warranties with respect to the use of the ClassLink Software on technology devices other than those specified in the Documentation.

6.2   Modification or attempted modification by Customer of any item of ClassLink Software shall void ClassLink's warranties with respect to such item of ClassLink Software.

6.3   ClassLink warrants to Customer that to the best of its knowledge ClassLink Software is not in violation of any patent, copyright, trademark or other intellectual property claims and that ClassLink has the right to license Customer's use of the ClassLink Software as provided in this Agreement.

6.4   ClassLink warrants to Customer that each item of ClassLink Software will conform, when shipped to Customer, to ClassLink specifications which are in effect for that item at that time. If Customer believes there is a defect in any item of ClassLink Software, Customer should notify ClassLink immediately and ClassLink will correct or replace the defective item of ClassLink Software. If ClassLink is unable to make the item of ClassLink Software perform as warranted, Customer may return the item of ClassLink Software and receive a full refund of fees paid for item of ClassLink Software. ClassLink shall have no liability for any claim under this Section not made within 90 days after the date of shipment of the item of ClassLink Software claimed to be defective. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, CLASSLINK DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN ANY ITEM OF CLASSLINK SOFTWARE WILL MEET THE CUSTOMER'S REQUIREMENT OR WILL OPERATE IN COMBINATION WITH OTHER SOFTWARE THAT CUSTOMER MAY SELECT OR THAT THE OPERATION OF THE CLASSLINK SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL DEFECTS WILL BE CORRECTED.

6.5   EXCEPT AS SPECIFICALLY PROVIDED HEREIN, CLASSLINK MAKES NO WARRANTIES EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF ANY CLASSLINK SOFTWARE, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, AS WELL AS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARISING THROUGH ANY COURSE OF DEALING OR COURSE OF PERFORMANCE BETWEEN THE PARTIES OR USAGE OF TRADE.

7.   Limitation of Liability and Damages

7.1   Limitation of Liability shall be handled in accordance with DIR Contract DIR-TSO-3385, Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, Section 10.K, Limitation of Liability.

8.   Term

8.1   This Agreement shall continue until terminated in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3385. Subject to record retention laws and policies, upon termination of this Agreement, the license and all rights granted to Customer under this Agreement shall immediately cease and Customer shall immediately: (a) Purge all copies of the ClassLink Software and any portions thereof from all CPU's and storage media and devices on which Customer has placed or allowed others to place the ClassLink Software; and (b) Certify that Customer has compiled with its obligations under this Section.

9.   General Provisions

9.1   Assignment. Assignments shall be handled in accordance with DIR Contract DIR-TSO-3385, Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, Section 4.D, Assignment.

9.2　Audit Rights. Upon reasonable notice to Customer, ClassLink shall have the right, at ClassLink's expense, to audit Customer's computer systems, at their place of keeping, for the purpose of assuring Customer compliance with the terms of this Agreement. The parties further agree to the terms in DIR Contract DIR-TSO-3385, Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, Section 9.C, Records and Audit.

9.3　Foreign Reshipment Liability. Customer will not export or transfer, whether directly or indirectly, the ClassLink Software to anyone outside the United States of America without first complying with all export controls which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business and paying any fees as specified in Section 5 hereof.

9.4　Notices. Notice shall be handled in accordance with DIR Contract DIR-TSO-3385, Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, Section 12.A, Notices.

9.5　Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to its principles of conflicts or choice of law. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

9.6　Entire Agreement. DIR Contract No. DIR-TSO-3385 and this Agreement constitute the entire software license agreement between ClassLink and Customer. It supersedes and replaces all previous understandings or agreements, written or oral, regarding such subject matter.

9.7　Changes. This Agreement may not be modified, amended, canceled or waived, in whole or in part, except by written amendment signed by the parties hereto.

9.8　Severability. Any provision of this Agreement found to be illegal or unenforceable shall be deemed severed, and the balance of this Agreement shall remain in full force.

10. Agreed:

10.1　CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY DIR CONTRACT NO. DIR-TSO-3385 AND THESE TERMS AND CONDITIONS.

ClassLink Service Level Agreement

1. Service Level Agreement Overview
1.1 This Service Level Agreement (SLA) represents an agreement between ClassLink, Inc. (ClassLink) and Customer for the provisioning of technical services required to support and sustain the ClassLink system.

2. Goals & Objectives
2.1 The goal of this SLA is to obtain mutual agreement for technical services to be provided to the Customer by ClassLink.

2.2 The objectives of this Agreement are to:
   a. Present a clear, concise and measurable description of technical services.
   b. Define mutual accountability, roles and responsibilities.

3. ClassLink Technical Services
3.1 The purpose of technical services within this SLA is to ensure the usability of such that the software works as intended by ClassLink.

3.2 The following technical services are the responsibility of ClassLink.
   a. Toll-free telephone technical support
   b. Monitored support case system (helpdesk ticket system)
   c. Monitored email request for support at helpdesk@classlink.com
   d. Ensure core reports function properly
   e. Development and installation of periodic software updates and enhancements
   f. Continuous system diagnostic monitoring
   g. Data backup
   h. Disaster/data recovery

3.3 ClassLink responsibilities in support of this SLA also include:
   a. Meeting response times associated with service related incidents.
   b. Appropriate notification to Customer for all scheduled maintenance.
   c. Changes to services will be communicated and documented to Customer.
   d. ClassLink, at its discretion, may contact users directly to investigate and resolve software performance issues.

3.4 The following technical services are outside the scope of this SLA and are available for purchase separately.
   a. Any administrative or user training
   b. Onsite assistance

4. Response Times
4.1 The following provides relevant details on technical service availability by toll-free telephone, support case system or email requests.
   a. 8am to 5pm CST, Monday through Friday, except ClassLink observed holidays (Office Hours).
   b. Voice messages, support case system or email requests received outside of Office Hours will be collected, however no action can be guaranteed until the next working day.

4.2 In support of services outlined in this SLA, ClassLink will respond to service related incidents and/or requests submitted by the Customer within the following time frames:
   a. 0-2 hours (during business hours) for issues classified as High priority.
   b. Within 24 hours for issues classified as Medium priority.
   c. Within 3 working days for issues classified as Low priority.

5. Customer Requirements
5.1 Customer responsibilities and/or requirements in support of this SLA include:

a. Reasonable availability of Customer representative(s) when resolving a service related incident or request.
b. Proactive communication of necessary information to assist in resolving a service related incident or request.
c. Payment for SLA costs as invoiced.
d. Maintain ample and reliable internet bandwidth for proper functioning of cloud delivered

6. Term
6.1   This SLA is valid beginning from the Effective Date specified herein and is valid until the Expiration Date specified herein.

see signature page
Effective Date

see signature page
Expiration Date

6.2   If either party fails to perform its obligations under this SLA and such failure continues for a period of (30) days after written notice, the other party shall have the right to terminate this SLA.

7. Agreed:
7.1   CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

ClassLink Data Security Statement

ClassLink takes security and privacy concerns seriously. We strive to ensure that data is kept secure, durable and reliably accessible. This *Security Statement* is aimed at being transparent about our security infrastructure and practices, to help reassure you that your data is sufficiently protected. We are committed to maintaining information security as prescribed in FERPA (Family Educational Rights and Privacy Act). In the spirit of GLB (Graham-Leach-Bliley Act), we willingly explain how our company safeguards confidential information.

We protect your confidential data by continuously evaluating and upgrading three key areas of our security plan:

1. Intrusion Defense
2. Backup and Recovery
3. Policy and Procedures

ClassLink system infrastructure is hosted by Rackspace and Amazon. Both Rackspace and Amazon facilities are secure, geographically diverse and are built using best practice security frameworks and standards. Information on the security of Rackspace infrastructure can be found at http://broadcast.rackspace.com/downloads/pdfs/RackspaceSecurityApproach.pdf and at http://www.rackspace.com/blog/compliance-standards-and-regulations-that-keep-the-cloud-secure. Information on the security of Amazon infrastructure can be found at http://aws.amazon.com/security.

ClassLink and Student Privacy Pledge (www.studentprivacypledge.org)

ClassLink is a long-time and active member of the SIIA and was an early signer to the Student Privacy Pledge. Our leadership is aware of the commitments in the pledge and we honor the promise we made to keep those commitments.

The commitments are as follows:

- Not collect, maintain, use or share student personal information beyond that needed for authorized educational/school purposes, or as authorized by the parent/student.
- Not sell student personal information.
- Not use or disclose student information collected through an educational/school service (whether personal information or otherwise) for behavioral targeting of advertisements to students.
- Not build a personal profile of a student other than for supporting authorized educational/school purposes or as authorized by the parent/student.
- Not make material changes to school service provider consumer privacy policies without first providing prominent notice to the account holder(s) (i.e., the educational institution/agency, or the parent/student when the information is collected directly from the student with student/parent consent) and allowing them choices before data is used in any manner inconsistent with terms they were initially provided; and not make material changes to other policies or practices governing the use of student personal information that are inconsistent with contractual requirements.
- Not knowingly retain student personal information beyond the time period required to support the authorized educational/school purposes, or as authorized by the parent/student.
- Collect, use, share, and retain student personal information only for purposes for which we were authorized by the educational institution/agency, teacher or the parent/student.
- Disclose clearly in contracts or privacy policies, including in a manner easy for parents to understand, what types of student personal information we collect, if any, and the purposes for which the information we maintain is used or shared with third parties.
- Support access to and correction of student personally identifiable information by the student or their authorized parent, either by assisting the educational institution in meeting its requirements or directly when the information is collected directly from the student with student/parent consent.
- Maintain a comprehensive security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information against risks – such as unauthorized access or use, or unintended or inappropriate disclosure – through the use of administrative, technological, and physical safeguards appropriate to the sensitivity of the information.

- Require that our vendors with whom student personal information is shared in order to deliver the educational service, if any, are obligated to implement these same commitments for the given student personal information.
- Allow a successor entity to maintain the student personal information, in the case of our merger or acquisition by another entity, provided the successor entity is subject to these same commitments for the previously collected student personal information.

We value your business and respect the importance of information security. We continually strive to mitigate and minimize risk. Computer security is a relative concept. No computer system connected to the Internet can be completely secure and no amount of testing can disclose all possible vulnerabilities. Accordingly, this *Security Statement* does not guarantee the complete security of our systems. We provide this *Security Statement* so that you understand we are committed to your information security by best practice / risk management strategies. You may also need this *Security Statement* for your auditors and insurance policy holders. If you require any further information, please don't hesitate to ask.

Signature of Acceptance

The following is a single signature of acceptance to the terms of the attached:

- DIR Contract No. DIR-TSO-3385
- ClassLink Software License Agreement
- ClassLink Service Level Agreement
- ClassLink Data Security Statement

_____
Effective Date

_____
Expiration Date

Accepted by:

Customer: ClassLink:

_____
Name of Organization

_____   _____
Signature   Signature

                                                   Berj Akian

_____   _____
Print Name   Print Name

                                                   CEO

_____   _____
Title   Title

_____   _____
Date   Date